

Testimony of:

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before the

Government Administration and Elections Committee
Gayle S. Slossberg, Co-Chair
James Field Spallone, Co-chair

March 16, 2009

Re: HB 6375 An act concerning review and termination of certain boards
Opposition to §1(3) termination of the Employee Misclassification Advisory Board

The growing problem of employee misclassification, or payroll fraud, in the construction industry is a priority concern of the United Brotherhood of Carpenters. A majority of states are increasing enforcement activity, especially in these times of budget deficits, to increase revenues. We therefore respectfully opposed the elimination of the Employee Misclassification Advisory Board.

Payroll fraud comes in two forms. First, construction employers misclassify workers as independent contractors when they are truly employees. Second, employees are paid "off the books," by either check or cash, and the payments are not reported as required by federal and state law.

In a competitive industry like ours, it is not difficult to see why it has become alarming. Construction employers who violate the law gain an unfair bidding advantage over law abiding competitors by unlawfully evading employment taxes, overtime pay and workers compensation premiums. That creates an uneven playing field where honest employers have difficulty competing for jobs. Also, it is not isolated to small remodeling projects. We see fraud in many types of construction-large and small, commercial and residential, public and private.

We recognize that contractors who violate the law to gain a competitive advantage not only harm industry standards-they also harm the greater community. Local, state and federal governments are cheated out of tax revenue. Insurance companies loose workers compensation premiums and pass along their losses to other employers. Workers are exploited and lose important legal protections that have been the law of the land for close to a hundred years.

We are not alone in recognizing the problem of payroll fraud. Recent studies done in Illinois, Maine, Massachusetts and Minnesota have found that 14 to 24 percent of construction employers misclassify their workers.¹ A 1984 IRS study says 19.8 percent of construction workers are misclassified. According to an Illinois study, fraud in the construction industry costs the state \$54.6 million in state income taxes, unemployment taxes and workers compensation premiums.² In Pennsylvania, payroll fraud costs the state \$200 million a year in unemployment taxes and \$81 million in workers compensation premiums.³ Ohio says that the illegal practice costs their state \$890 million in lost unemployment taxes, state and local income taxes and workers compensation premiums.⁴ You should note that these studies offer conservative estimates, because they do not quantify off-the books payments--paying workers unreported compensation.⁵ Other studies, though, have done that. A California study of workers compensation premiums identified \$100 billion dollars of underreporting--that would include misclassification, off the books payments and putting workers in cheaper-cost classification codes.⁶ A recent study by the Fiscal Policy Institute found that 50,000 of New York City's 200,000 construction workers are misclassified or paid off the books, costing up to \$557 million in lost state and federal taxes and health-care cost shifting in 2008.⁷ Clearly, we are not dealing with a small problem.

¹ *The Social & Economic Cost of Employee Misclassification in Construction*, Construction Policy Research Center, Labor & Worklife Program, Harvard Law School & Harvard School of Public Health, by Bernhard and Herrick, p. 1 (December 2004) (Massachusetts Study), *The Social & Economic Cost of Employee Misclassification in the Maine Construction Industry*, Construction Policy Research Center, Labor & Worklife Program, Harvard Law School & Harvard School of Public Health, by Bernhard and Herrick, pp. 1-2 (April 2005) (Maine Study), *The Cost of Worker Misclassification in New York State*, Cornell Univ., ILR School, by Donahue, p. 2 (February 2007), *Economic Costs of Employee Misclassification in the State of Illinois*, Dep. Of Economics, Univ. Missouri-Kansas City, by Kelsay, Sturgeon and Pinkham, pp. 4, 5 and 15 (December 2006) (Illinois Study) and *Misclassification of Employees as Independent Contractors*, Office of the Legislative Auditor, State of Minnesota, pp 15 and 18 (November 2007).

² Illinois Study, p. 6-8.

³ Testimony of Patrick T. Beaty, Deputy Secretary for Unemployment Compensation Programs, Pennsylvania Department of Labor and Industry, before the House of Representatives Commonwealth of Pennsylvania, Labor Relations Committee on HB 2400, The Employee Misclassification Prevention Act, p. 3 (April 23, 2008), Testimony of Timothy L. Wisecarver and Bruce Decker, Pennsylvania Compensation Rating Bureau, Summary of Testimony before the House of Representatives Commonwealth of Pennsylvania, Labor Relations Committee on HB 2400, The Employee Misclassification Prevention Act, p. 3 (April 23, 2008).

⁴ *Report of the Ohio Attorney General on the Economic Impact of Misclassified Workers for State and Local Governments in Ohio*, pp. 18 and 22 (February 18, 2009).

⁵ Massachusetts Study, p. 1, Maine Study, p. 1, Illinois Study, p. 2.

⁶ *Up to One Fifth of California Payroll Not Reported*, WorkCompCentral, by Jim Sams (April 30, 2007), *Fraud in Workers' Compensation Payroll Reporting: How Much Employer Fraud Exists and How are Honest Employers Impacted*: Report for the Commission on Health and Safety and Workers' Compensation, by Frank Neuhauser and Colleen Donovan, University of California, Berkeley (August 2007), pp. 1-3 and 7-8.

⁷ *Building Up New York, Tearing Down Job Quality: Taxpayer Impact of Worsening Employment Practices in New York City's Construction Industry*, Fiscal Policy Institute (New York City Construction) (December 2007), pp. 1 and 20-22.

The problem of payroll fraud has been recognized in Connecticut. Last year, the Governor signed into law a bill that established an enforcement task force of state agencies. Attached to the task force is an advisory board of employee and employer representatives. The advisory board is invited to meet with the task force members to share information on market and other conditions as well as unlawful schemes in order to assist the task force's efforts.

We understand that the Governor is terminating boards to improve the budget. Terminating the misclassification advisory board may accomplish the opposite. The advisory board adds no cost. It meets with task force members, and the advisory board members are not compensated. In addition, their advice to the task force can lead to better voluntary compliance with state tax laws, and give the task force information that can improve law enforcement methods.

We respectfully request the Committee to amend HB 6375 by striking §1(3) in order to preserve the Employee Misclassification Advisory Board.

Respectfully submitted,

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